

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ANTICANCER, INC.,

CASE NO. 11CV107 JLS (RBB)

• 16

Plaintiff.

PFIZER INC.,

Defendant.

**ORDER GRANTING MOTION
FOR LEAVE TO FILE AMENDED
COMPLAINT AND TO JOIN
CROWN BIOSCIENCE, INC. AS A
DEFENDANT**

(ECF No. 15)

14 Presently before the Court is Plaintiff's motion for leave to file amended complaint and to
15 join Crown Bioscience, Inc. as a defendant. (ECF No. 15) Also before the Court is Defendant's
16 statement of non-opposition of Defendant Pfizer Inc. in response to motion for leave to file
17 amended complaint. (ECF No. 17) Having considered the parties' arguments and the law, the
18 Court **GRANTS** Plaintiff's motion and **VACATES** the hearing presently set for January 12, 2012.

Leave to amend the complaint should be freely given “when justice so requires.” Fed. R. Civ. P. 15(a)(2). But while Rule 15 should be interpreted liberally, leave to amend should not be granted automatically. *Jackson v. Bank of Haw.*, 902 F.2d 1385, 1387 (9th Cir. 1990). A trial court may deny leave to amend if permitting amendment “would prejudice the opposing party, produce and undue delay in the litigation, or result in futility for lack of merit.” *Id.*

24 Federal Rules of Civil Procedure 19 and 20 govern who may be joined as a party. Rule
25 20(a)(2) allows for the permissive joinder of defendants if “any right to relief is asserted against
26 them jointly, severally, or in the alternative with respect to or arising out of the same transaction,
27 occurrence, or series of transactions or occurrences” and “any question of law or fact common to
28 all defendants will arise in the action.” Fed. R. Civ. P. 20(a)(2).

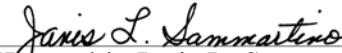
1 Plaintiff's proposed amendments to the complaint are purportedly based on new
 2 information Plaintiff has learned since the filing of the original complaint. (Mot. for Leave to Am.
 3 2, ECF No. 15) Moreover, the parties do not dispute that Defendant Pfizer will not be prejudiced
 4 by permitting Plaintiff to file an amended complaint.

5 In addition, Plaintiff proposes to join Crown Bioscience, Inc ("Crown") as a defendant
 6 because Plaintiff's fifth claim for relief for infringement is based on Pfizer and Crown's allegedly
 7 infringing joint activities, and thus Plaintiff's claims against both arise out of the same transaction
 8 or occurrence. (*Id.* at 6–7) Moreover, Plaintiff contends that its fifth claim for infringement "will
 9 necessarily involve substantial common questions of fact between Pfizer and Crown." (*Id.* at 7)
 10 Finally, Plaintiff maintains that joinder of Crown "will help avoid the need for multiple lawsuits,
 11 promote the efficient discovery of common questions of fact, and preserve judicial resources." (*Id.*
 12 at 8)

13 Defendant Pfizer does not oppose Plaintiff's motion to amend and to join Crown as a
 14 Defendant. (Stmt. Non-Opp'n, ECF No. 17) Instead, Defendant's statement of non-opposition
 15 disputes the merits of the amended pleadings. (*Id.* at 2) As Defendant correctly recognizes,
 16 however, "the instant motion seeking leave to amend the complaint is not the proper procedural
 17 vehicle for Pfizer to dispute the substance of the claims sought to be added." (*Id.* at 3) To the
 18 extent that Defendant's statement of non-opposition can be construed as an opposition to
 19 Plaintiff's motion—based on Defendant's contentions that, for example, "[t]he filing of the
 20 proposed amended complaint will serve only to further prolong this unnecessary litigation," (*id.* at
 21 2), and that "Plaintiff AntiCancer's bid to amend its complaint is simply an effort to obtain a more
 22 favorable settlement," (*id.* at 3)—the Court nevertheless finds that amendment and joinder are
 23 appropriate here.

24 **IT IS SO ORDERED.**

25 DATED: November 8, 2011

26 
 27 Honorable Janis L. Sammartino
 United States District Judge

28